Judge:	Hon. Marc Barreca
Chapter:	Chapter 7
Hearing Date:	June 1, 2012
Hearing Time:	9:30 a.m.
Hearing Site:	700 Stewart Street, #7106 Seattle, WA 98101
Reply Date:	May 29, 2012

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN, Debtor.	Bankruptcy No. 10-19817 TRUSTEE'S REPLY TO DEBTOR'S OBJECTION TO TRUSTEE'S MOTION TO APPROVE SETTLEMENT OF ISSUES RELATING TO REAL PROPERTY LOCATED 868 MONTCREST DRIVE, REDDING, CALIFORNIA

Ron Brown, the Chapter 7 Trustee herein replies to the Debtor's objection to the Trustee's Motion to approve settlement of issues relating to real property located at 868 Montcrest Drive, Redding, California ("Debtor's Objection") as set forth below.

Declaration of Adam Grossman Should Be Stricken

The Declaration of Adam Grossman should be stricken as it is nothing more than one rambling hearsay statement that has no documentation attached to support any of the allegations contained therein.

Further, the declaration clearly contradicts prior sworn statements of the Debtor. In the debtor's current declaration he tries to convince the Court that the 868 Montcrest Drive Property is not community property, and in fact, that the Montcrest Property is not owned by either the community or he and his wife individually. Contrast this position to his sworn answers to interrogatories in which he stated:

> The only assets held by the Ptarmigan Real Estate Fund, LLC are the house purchased with community funds and a Bank of America checking account with a $139.62 balance of 4/30/10. (Statements produced with discovery material).

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> The house purchased through the Ptarmigan fund Is located at 868 Montcrest Dr., Redding, California. To complicate matters further, title is held in the name of the "868 Montcrest Dr. Family Trust." The Ptarmigan Fund is the beneficiary of the trust, which means the parties hold 100% of the beneficial interest in this trust. There are no other assets of any kind in the name of this trust. There should be no issues regarding the trust at mediation because, as with the Ptarmigan Fund LLC and TDCM. LLC, we can disregard these corporate forms and treat the house as community property for purposes of this divorce.

See Declaration of Denice Moewes filed simultaneously herewith, Exhibit "1" page 6-7.

Further, if the debtor has no interest in the Montcrest Property and it is, in fact, owned by someone else, how is it that the State Court awarded the Property to the wife? Further, if it does not belong to the debtor or the community what authority would this Court have to order the Montcrest Property sold and the net proceeds used to pay his community obligations?

Debtor's Position in his objection has already been rejected by Court.

The Debtor's Objection contains almost verbatim the same arguments that the debtor argued to this Court in his Motion for Order Declaring Property Not Abandoned from the Bankruptcy Estate (docket #237). Both the Trustee and the debtor's ex-wife, Jill Borodin, filed objections to that motion (docket #256 and #257) both of which are incorporated herein by reference. The Trustee sees no need to restate his position and that of Ms. Borodin since they are already on file with the Court.

Creditors should be paid before Spouse

Since there was no stay in place, due to the debtor's two prior bankruptcy filings, the State Court divided the assets and debts, after the Debtor's wife obtained an order confirming that no stay was in place from then Judge Samuel Steiner. The debtor did not object to the entry of such an order. After a trial on the dissolution the State Court did divide the assets and the liabilities. The debtor apparently does not like the result of the asset division, although the trustee has always been puzzled by this since the debtor got three of the properties and the wife got one. The State Court also divided the community and separate

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liabilities amongst the parties. As pointed in out the Trustee's original motion all of the creditor claims assigned to the debtor have filed proofs of claim. However, none of the claimants that were assigned to the wife have filed claims in this estate. Thus, the trustee does not agree with the debtor's contention that the community claims would not be paid if the settlement was approved. The community claims assigned to the wife would likely receive payment from the wife once the Montcrest property was sold. The community claims assigned to the husband would be paid from the liquidation of three properties that were assigned to the husband.

The debtor contends that the Trustee should liquidate the Montcrest Property and pay all of the claimants who filed claims. There are several problems with this argument. As stated on numerous occasions, the Trustee does not believe we will ever realize enough funds to make a disbursement to general unsecured claimants. Based on the claims filed the trustee believes there are approximately $83,000.00 of potential chapter 11 claims - $35,000.00 Emily Tsai; $28,000 – Jill Borodin (sanctions awarded to Ms. Borodin against Mr. Grossman during the pendency of the chapter 11) and $20,000.00 that Mr. Opie may be contending constitutes a chapter 11 claim. There are approximately $16,000 in tax claims filed.

There is no getting around the fact that the State Court awarded the Montcrest Property to Ms. Borodin and that a special master signed a deed transferring the Montcrest Property to Ms. Borodin. There is no disagreement that Mr. Grossman, in violation of the State Court order, transferred the Montcrest Property post-petition for no consideration and without court approval. Thus the Montcrest Property is no longer in the name of the debtor or the estate and title would appear to be a mess. The debtor seems to be asking this Court to compel the Trustee to file a motion or complaint with this Court to somehow nullify the State Court ruling that the Montcrest Property belongs to the wife. Apparently, the Trustee's

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counsel is to front the expense to accomplish this. As stated in the Trustee's Motion, neither the Trustee or his counsel are overly confident that we would prevail if we brought a motion to set aside the Court's order awarding the Montcrest Property to Ms. Borodin.

Exclusive Jurisdiction

The Debtor's Objection relies heavily on the case of *In re Palmer*, 78 B.R. 402, to support his contention that the Supremacy Clause renders the division of assets and liabilities by the State Court null and void. However, that reliance is misplaced. In the *Palmer* case the automatic stay was in effect and as such the court ruled:

> That the stay is vacated to permit an adjudication by the matrimonial court of the rights, obligations, duties ad property interests of the non-debtor spouse. The stay, however, remains in full force and effect regarding enforcement of those rights as it affects property of the estate.

In re Palmer, at 407.

Similarly, the debtor's reliance on the ruling in the case of *In re Price*, 154 B.R. 344 (Bankr.N.D. Fla. 1993) is equally misplaced because the Court found that any award of liens on property owned by the debtor at the time of this bankruptcy would be void since the imposition of such liens would be in violation of the provisions of § 362(a)(4) or (5). Ibid, at 346. There are no section 362 provisions in place in this proceeding.

After citing the above cases, the Debtor then goes on to say that the trustee's claim the he believed he would only have a 20-30% chance of prevailing in any proceeding to set aside the division of assets in the State Court proceeding is "dubious". However, the cases the Debtor cites lend credence to the trustee's assessment of the chances of prevailing.

The Debtor already filed a motion seeking a determination that the State Court Decree of Dissolution was ineffective and that the Montcrest Property, although transferred by both the wife, pursuant to a Court order, and the debtor, in violation of section 549 of the Bankruptcy Code, was still property of the estate this Court had jurisdiction over. The Court

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denied that motion. Nonetheless, the Debtor is asking this Court to compel the trustee to bring this same motion?

Timing of Motion is not Suspect

The Debtor's Objection seems to imply that the Trustee's Motion was filed to be heard before oral argument was granted on the debtor's appeal of the State Court Decree of Dissolution, and that June 5, 2012 is the date that the Court will rule on the appeal. Neither the Trustee nor his counsel have followed the debtor's appeal and are not aware of any deadlines or dates in that appeal. The Declaration of Karma Zaike, filed simultaneously herewith, explains the latest status of the appeal.

Conclusion

The Court should overrule the Debtor's Objection and approve the Trustee's Motion.

DATED this 29th day of May, 2012.

WOOD & JONES, P.S.

/s/ Denice E. Moewes

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